

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THOMAS REGER,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

CASE NO. 2:21-cv-00910-BAT

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS**

Defendant Bank of America Corporation (more properly named Bank of America, N.A. ("BANA")),¹ moves to dismiss Plaintiff Thomas Reger's Complaint (Dkt. 1-1) with prejudice. Dkt. 8. Defendant argues that Plaintiff's claim is time-barred and that the Complaint fails to state a claim for relief that is plausible on its face. *Id.*

Plaintiff, who is proceeding *pro se* in this action, filed no opposition to the motion to dismiss although Defendant served him with a copy of its motion by U.S. Mail and e-mail. Dkt. 8, p. 11. On August 26, 2021, the Court also reminded the parties that the motion to dismiss was noted for September 10, 2021 and that Plaintiff's opposition must be filed by September 7, 2021. Dkt. 12. Plaintiff's failure to file an opposition to the motion may be considered by the Court as an admission that Defendant's motion has merit. LCR 7(b)(2).

¹ Plaintiff has named Bank of America Corporation ("BAC") as the defendant. Defendant advises that BANA, not BAC, is the proper defendant in this action because the credit card account was issued by BANA. Although BAC is the ultimate corporate parent of BANA, it is not a bank and does not maintain consumer bank accounts or issue credit cards. Dkt. 8, p. 1, n.1.

1 Having carefully reviewed Plaintiff's Complaint, Defendant's motion, and balance of the
2 record, the Court grants the motion to dismiss without leave to amend.

3 PLAINTIFF'S ALLEGATIONS

4 On or around November 25, 2019, Plaintiff purchased a parcel of land (the Transaction")
5 located in Seattle, Washington (the "Property") from Harris Investments, LLC ("Harris"). Dkt. 1-
6 1, ¶ 6. Plaintiff paid the amount of \$8,944.52 for the Property with his Bank of America Visa
7 Credit Card. *Id.*, at ¶ 7. Harris promised to transfer the Property title to Plaintiff "after payment,"
8 but failed to deliver title "even after polite emails prodding's[sic] [Harris] to do so. . . ." *Id.* at ¶
9 9.

10 On January 30, 2020, Plaintiff disputed the \$8,944.52 charge and BANA credited the
11 disputed amount back to Plaintiff's account. *Id.* at ¶ 10. Plaintiff then "moved on" to another real
12 estate purchase, for which he partially paid using the same BANA credit card. *Id.* at ¶ 11.

13 On February 28, 2020, after BANA notified Harris of the disputed charge, Harris
14 responded to BANA by sending a fax that included a copy of the recorded deed conveying the
15 Property to Plaintiff. *Id.* at ¶ 12. The Court takes judicial notice of the Special Warranty Deed
16 recorded in the King County Auditor Records (see [https://recordsearch.kingcounty.gov/](https://recordsearch.kingcounty.gov/LandmarkWeb)
17 LandmarkWeb), recording date February 27, 2020, File No. 20200227000873. Dkt. 9,
18 Declaration of Jesús Palomares, ¶ 3, Ex. B.

19 Thereafter, BANA reversed the previously granted credit for the "failed transaction."
20 When it did so, Plaintiff's balance exceeded the credit line by \$8,000.00. Dkt. 1-1, ¶ 16.
21 Plaintiff's credit score dropped from 750 to 660, triggering other creditors to close Plaintiff's
22 zero balance accounts, which caused the score to drop below 640. *Id.*, ¶ 17. Plaintiff was then
23 unable "to secure traditional financing for [his replacement real estate] project." *Id.* at ¶ 18.

1 In March 2021, Plaintiff contacted BANA and requested that it again review the charge.
2 After 90 days, BANA again denied the charge but did not provide Plaintiff with “a detailed
3 reason or status.” *Id.*, ¶ 20.

4 Plaintiff claims that BANA failed to perform a reasonable and timely investigation as is
5 required by the Fair Credit Billing Act (“FCBA”) and that BANA’s wrongful actions damaged
6 him by (1) causing his credit score to drop; (2) improperly charging interest for the past 18
7 months; (3) causing Plaintiff to pay higher interest expenses due to his inability to refinance his
8 home; (4) causing embarrassment; (5) causing Plaintiff to pay a \$99 annual fee; and (6) causing
9 damages equal to the purchase price of the Property (\$8,944.52). Dkt. 1-1, p. 8, ¶¶ 5-6.

10 PROCEDURAL BACKGROUND

11 On or about June 17, 2021, Plaintiff served BANA with copies of unfiled Summons and
12 Plaintiff’s Complaint for Damages, Statutory Damages and Injunctive Relief, which were signed
13 by Plaintiff on June 14, 2021. Dkt. 1-1, pp. 2-3; pp. 4-10. The Complaint is captioned to be filed
14 in King Superior Court in King County, Washington. The Summons and Complaint were served
15 on BANA without first being filed with the State Court, which is allowed under CR 4.

16 On July 7, 2021, BANA filed a Notice of Removal. Dkt. 1.

17 DISCUSSION

18 A. Legal Standard

19 To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a plaintiff must allege
20 enough facts to state a claim to relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550
21 U.S. 544, 570 (2007). A complaint must show “more than a sheer possibility that a defendant has
22 acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “A pleading that offers labels and
23 conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a

1 complaint suffice if it tenders naked assertions devoid of further factual enhancement.” *Id.*
2 (internal citations omitted). A plaintiff must plead “factual content that allows the court to draw a
3 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*,
4 550 U.S. at 556). Further, while the Court must accept the well pled factual allegations in the
5 complaint as true when ruling on a motion to dismiss, the Court “need not accept as true legal
6 conclusions couched as factual allegations,” *Wilson v. Craver*, 994 F.3d 1085, 1090 (9th Cir.
7 2021) (citing *Iqbal*, 556 U.S. at 678–79), and need not accept “unwarranted inferences,” *Rogers*
8 *v. Cty. of Riverside*, 139 F.3d 907 (9th Cir. 1998) (internal citations omitted).

9 In evaluating a Rule 12(b)(6) motion, review is ordinarily limited to the contents of the
10 complaint and material properly submitted with the complaint. *Clegg v. Cult Awareness*
11 *Network*, 18 F.3d 752, 754 (9th Cir.1994). The Court may also examine “documents
12 incorporated into the complaint by reference and matters of which a court may take judicial
13 notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322, 127 S.Ct. 2499, 2509
14 (2007).

15 As a general rule, leave to amend a complaint which has been dismissed should be freely
16 granted. Fed. R. Civ. P. 15(a). However, leave to amend may be denied when “the court
17 determines that the allegation of other facts consistent with the challenged pleading could not
18 possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393,
19 1401 (9th Cir. 1986).

20 B. Statute of Limitations

21 “A statute-of-limitations defense, if ‘apparent from the face of the complaint,’ may
22 properly be raised in a motion to dismiss.” *Seven Arts Filmed Entm’t Ltd. v. Content Media*
23 *Corp.*, 733 F.3d 1251, 1254 (9th Cir. 2013) (quoting *Conerly v. Westinghouse Elec. Corp.*, 623

1 F.2d 117, 119 (9th Cir. 1980)).

2 “To succeed on a claim under 15 U.S.C. § 1666, plaintiff must show (1) the existence of
3 a billing error, (2) timely notification of the billing error, and (3) failure of the bank to issue the
4 card to comply with the procedural requirements of Section 1666.” *Cunningham v. Bank One*,
5 487 F. Supp. 1189, 1192 (W.D. Wash. 2007). Billing error disputes pursuant to the FCBA are
6 governed by a one-year statute of limitations. *See* 15 U.S.C. § 1640(e).

7 While Plaintiff does not allege when BANA reversed the credit to his account, he knew at
8 the latest, in “March of 2020” that Harris had transferred the title to him – which was what
9 caused BANA to reverse the credit – the action upon which Plaintiff bases his alleged damages
10 (in particular, his inability to secure traditional financing for the second real estate project he had
11 already started prior to March 2020). Thus, Plaintiff’s alleged FCBA claim arose sometime in
12 March 2020.²

13 Under Fed. R. Civ. P. 3, a civil action is commenced by filing the complaint. As Plaintiff
14 originally filed this action in King County Superior Court, he did not need to file his complaint
15 before serving it on BANA. *See* CR 3(a) and RCW 4.16.170 (If an action is commenced by
16 service ..., the plaintiff must file the summons and complaint within ninety days from the date of
17 service. If following service, the complaint is not so filed, the action shall be deemed to not have
18 been commenced for purposes of tolling the statute of limitations).

19 Under Plaintiff’s timeline then, Plaintiff would have had to serve his State Court
20 Complaint on BANA by March 2021 – the first step required under RCW 4.16.170 to toll the
21 relevant one-year statute. However, Plaintiff did not serve BANA with the unfiled Summons and
22

23 ² Plaintiff also alleges that he “again contacted [BANA] in March of 2021 requesting that they
again review the charge.” Dkt. 1-1, ¶ 20. However, Plaintiff’s action accrued when he knew of
his damages, which would have been around March 2020 and not March 2021.

1 Complaint until June 17, 2021, three months after the statute of limitations had expired. *See* 15
 2 U.S.C. § 1640(e).

3 Thus, amendment would be futile and therefore, Plaintiff's FCBA claims are dismissed
 4 with prejudice. In addition to being time barred, the Court concludes that the Complaint fails to
 5 state a FCBA claim as a matter of law.

6 C. Failure to Allege a FCBA Claim

7 1. Consumer Transaction

8 Plaintiff's action is based on BANA's alleged violation of the billing dispute procedures
 9 contained in the FCBA, 15 U.S.C. § 1666, which is part of the Truth In Lending Act ("TILA"),
 10 15 U.S.C. § 1601. The FCBA was enacted to help consumers make informed decisions about the
 11 use of credit and to protect consumers against unfair and inaccurate credit billing practices.
 12 *Cunningham*, 487 F. Supp. 2d at 1191 (citing *GAC Finance Corp. of Spokane v. Burgess*, 16
 13 Wash.App. 758, 760, 558 P.2d 1386 (1977)).

14 The FCBA defines a "consumer" credit transaction as "one in which the party to whom
 15 the credit is offered or extended is a natural person, and the money, property, or services which
 16 are the subject of the transaction are primarily for personal, family, or household purposes." 15
 17 U.S.C. § 1602(i). Plaintiff alleges that he used his BANA credit card to purchase the Property but
 18 does not allege that the purchase was for a personal, family, or household purpose. Throughout
 19 his Complaint, Plaintiff refers to his real estate purchases as "real estate projects" and
 20 differentiates them from his "home" *i.e.*, his principal residence. Dkt. 1-1, ¶ 11 ("Plaintiff then
 21 'moved on' and made another real estate purchase"); *id.*, ¶ 15 ("Plaintiff had already begun
 22 another real estate project in Bremerton, Washington. . ."), *id.*, ¶ 18 ("Plaintiff was just
 23 beginning a real estate project when [BANA] damaged his credit and created a barrier for

1 Plaintiff to secure traditional financing for the project.”), *id.*, Damages Section ¶ 3 (“Plaintiff has
2 been unable to refinance his home”).

3 Additionally, the Court takes judicial notice of the records of the King County Auditor,
4 which show that Plaintiff is the sole governor of an entity called Great Loop Fund, LLC,
5 which is a “Real Property Investment” company doing business in Washington. Dkt. 9,
6 Palomares Decl., ¶ 2, Ex. A. According to the Auditor’s records, Great Loop Fund acquired a
7 parcel of land on February 27, 2020, for \$7,440.00. *Id.*, Palomares Decl., ¶ 3, Ex. B. This appears
8 to be the Property described in the Complaint. Dkt. 1-1, ¶ 12 (the deed from Harris is dated
9 February 27, 2020).

10 Plaintiff has not alleged that the disputed Transaction was a consumer credit transaction,
11 *i.e.*, one meant for his personal, family, or household purposes. Instead, the allegations indicate
12 that the Transaction was a business transaction related to Plaintiff’s real property investment
13 business – which does not fall within the purview of the FCBA.

14 2. Billing Error

15 To succeed on a claim under 15 U.S.C. § 1666, plaintiff must show (1) the existence of a
16 billing error, (2) timely notification of the billing error, and (3) failure of the bank issuing the
17 card to comply with the procedural requirements of Section 1666. *Cunningham*, 487 F. Supp. 2d
18 at 1192 (citing *Beaumont v. Citibank (South Dakota) N.A.*, 2002 WL 483431, at *3 (S.D.N.Y.
19 March 28, 2002)). The FCBA provides a dispute resolution procedure for the “correction of
20 billing errors” on consumer credit statements. *See* 15 U.S.C. § 1666(a); 12 C.F.R. § 226.1
21 (stating that one purpose of FCBA is to “provide a means for fair and timely resolution of credit
22 billing disputes”); *Lyon v. Chase Bank USA, N.A.*, 656 F.3d 877, 880 (9th Cir. 2011) (“Fair
23 Credit Billing Act seeks to prescribe an orderly procedure for identifying and resolving disputes

1 between a cardholder and a card issuer as to the amount due at any given time.”) (quoting *Gray*
 2 *v. Am. Express Co.*, 743 F.2d 10, 13 (D.C.Cir.1984)).

3 Section 1666(a) imposes specific requirements for the “time and contents” of the notice
 4 of billing error provided by the obligor to a creditor, requiring that the notice (1) identify the
 5 obligor’s name and account number; (2) indicate the obligor’s belief that the account statement
 6 contains a “billing error” and the amount of such billing error; and (3) set forth the reasons for
 7 the obligor’s belief that the statement contains a billing error. 15 U.S.C. § 1666(a)(1)-(3). The
 8 obligor must submit the dispute notice within sixty days after receiving the allegedly erroneous
 9 statement. *Id.* Section 1666(b) defines “billing error” as any of the following seven items:

- 10 1) A reflection on a statement of an extension of credit which was not made
 11 to the obligor or, if made, was not in the amount reflected on such
 statement.
- 12 2) A reflection on a statement of an extension of credit for which the obligor
 13 requests additional clarification including documentary evidence thereof.
- 14 3) **A reflection on a statement of goods or services not accepted by the**
 15 **obligor or his designee or not delivered to the obligor or his designee**
 16 **in accordance with the agreement made at the time of a transaction.**
- 17 4) **The creditor’s failure to reflect properly on a statement a payment**
 18 **made by the obligor or a credit issued to the obligor.**
- 19 5) A computation error or similar error of an accounting nature of the
 20 creditor on a statement.
- 21 6) Failure to transmit the statement required under section 1637(b) of this
 title to the last address of the obligor which has been disclosed to the
 22 creditor, unless that address was furnished less than twenty days before the
 23 end of the billing cycle for which the statement is required.
- 7) Any other error described in regulations of the Board.

15 U.S.C. § 1666(b) (emphasis added). Upon receiving the written notice described above from
 the obligor, a creditor must follow the procedures outlined in 15 U.S.C. § 1666(a)(A) and (B),

1 which include sending the obligor, within two billing cycles and no later than 90 days, a written
2 correction of the billing error or explanation of why the alleged billing error was not corrected
3 (“Compliance Duties”).

4 Plaintiff has not alleged either the existence of a billing error nor a failure on BANA’s
5 part to comply with the procedural requirements of § 1666. Plaintiff alleges that he paid Harris
6 for the Property and Harris promised to transfer him the Property “after payment.” Dkt. 1-1, ¶¶
7 7-8. Plaintiff acknowledges, as he must, that Harris transferred the Property to him. Plaintiff
8 alleges that the transfer was not timely as the Deed was not recorded until almost a month after
9 Plaintiff disputed the Transaction. However, Plaintiff does not allege that there was any
10 contractual deadline by which Harris was required to transfer the title nor does he allege that he
11 invoked a default, or took any steps to rescind the Transaction. Plaintiff merely alleges that after
12 he filed a dispute of the Transaction charge with BANA, he simply “moved on and made another
13 real estate purchase. . . .” Dkt. 1-1, ¶¶ 10-11.

14 Plaintiff’s allegations also reflect that BANA complied with § 1666. According to
15 Plaintiff, BANA received Plaintiff’s dispute on or about January 30, 2020. Dkt. 1-1, ¶ 10. Less
16 than thirty days later, on February 28, 2020, BANA notified Plaintiff of its investigation results
17 (fax from Harris showing the Property transfer) and reversed the provisional credit previously
18 provided to Plaintiff. *Id.*, ¶¶ 14, 16. Thus, BANA complied with its 15 U.S.C. § 1666(a)(A)-(B)
19 obligations by investigating and notifying Plaintiff within two billing cycles.

20 CONCLUSION

21 Based on the foregoing, the Court concludes that Plaintiff’s FCBA claim should be
22 dismissed with prejudice as it is time barred. Additionally, Plaintiff’s FCBA claim is legally
23 deficient as the Transaction at issue was not a consumer transaction entitled to the protections of

1 the FCBA and there are no allegations that BANA failed to comply with its statutory obligations.

2 Accordingly, it is **ORDERED** that BANA's motion to dismiss (Dkt. 8) is **GRANTED**
3 and Plaintiff's Complaint is **dismissed with prejudice**.

4 DATED this 20th day of September, 2021.

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BRIAN A. TSUCHIDA
United States Magistrate Judge